

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

FEB 07 2020

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

JOSEPH L. BURNS,

Plaintiff,

v.

**KIRSTJEN NIELSEN,
Secretary, U.S. Department
of Homeland Security,**

Defendant.

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EP-17-CV-00264-DCG

VERDICT FORM

QUESTION NO. 1:

With regard to Plaintiff's Claim 1 (Discrimination Based on Disability), has Plaintiff Joseph L. Burns proved by a preponderance of the evidence that the Agency removed Plaintiff Burns from tower climbing duties because of his disability?

Yes ✓

No _____

QUESTION NO. 2:

With regard to Plaintiff's Claim 2 (Discrimination Based on Regarded-As Having an Impairment), has Plaintiff Joseph L. Burns proved by a preponderance of the evidence that the Agency removed

Plaintiff Burns from tower climbing duties because of his being regarded as having migraines?

Yes ☒

No ☐

QUESTION NO. 3:

With regard to Plaintiff's Claim 3 (Improper Medical Inquiry), has Plaintiff Joseph L. Burns proved by a preponderance of the evidence that the Agency made a disability-related inquiry of Plaintiff Burns.

Yes ☒

No ☐

QUESTION NO. 4:

With regard to Defendant's Affirmative Defense of Business Necessity to Plaintiff's Claim 3 (Improper Medical Inquiry), has Defendant Kirstjen Nielsen proved by a preponderance of the evidence that the Agency had a reasonable belief based on objective evidence either that (1) Plaintiff Burns' ability to perform essential job functions will be impaired by a medical condition or that (2) that Plaintiff Burns will pose a direct threat due to a medical condition?

Yes ☐

No ☒

Dated this 7th of February 2020, in El Paso, Texas.

FOREPERSON